Ong Ean Nee v Tong Hong Lun

HIGH COURT (PULAU PINANG) — CIVIL APPEAL NO 12–44 OF 2002
KAMALANATHAN RATNAM J
23 OCTOBER 2002

Road Traffic *— Negligence — Fatal accident — Collision between two motorcycles — Contradictory versions on how accident occurred — Sketch plan showed that defendant's version was believable — Whether trial judge's findings that plaintiff's version ought to be believed was supported by sketch plan*

On 5 October 1997, the plaintiff was riding his motorcycle when he was collided into by another motorcycle ridden by the deceased, who was proceeding from the opposite direction. The deceased's pillion rider testified that he and the deceased had come out of a side road on the left as one faced Mak Mandin and had intended to turn right after proceeding for a short distance in the direction of Mak Mandin. They then stopped near the centre of the road, intending to cut across the road. As they were stationary, the pillion rider noticed an oncoming van slowing down with its right signal on, intending to cut across their path. Suddenly, the plaintiff's motorcycle, which was following the van, overtook the van and collided into the stationary motorcycle. The plaintiff's version was that he did not overtake the van but was following the van when the deceased's motorcycle collided into his motorcycle. Having heard the evidence, the sessions court judge found the deceased totally liable and awarded the plaintiff damages. Dissatisfied with the decision, the defendant (who was the owner of the motorcycle ridden by the deceased) appealed.

Held, allowing the appeal:

(1) If the plaintiff was on his correct half of the road and if the defendant's oncoming motorcycle had collided into his motorcycle on the plaintiff's side of the road as alleged by the plaintiff, both motorcycles would be found on the plaintiff's side of the road. However, the silent evidence as reflected in the sketch plan showed the defendant's motorcycle lying very close to the centre line and on its side of the road whereas the plaintiff's motorcycle had skidded and gone beyond the defendant's fallen motorcycle and was found lying on the left grass verge as one faced Mak Mandin. Further, pieces of broken glass and a blood spot were found completely on the defendant's half of the road. As such, the plaintiff's version of the accident was not acceptable (see p 117D–F).

(2) The silent evidence showed that it was the plaintiff who had overtaken the van and collided into the stationary defendant's motorcycle (see p 117F–G).

(3) The defendant's motorcycle was indeed stationary when it was collided into because it had fallen exactly near the centre white

A line where the pillion rider said they had stationed themselves (see p 117G).

(4) Further, the driver of the van stated in his report that the plaintiff had overtaken him (see p 117G–H).

B (5) Accordingly, the trial judge's findings that the plaintiff's version ought to be believed was unsupported by the silent evidence as found in the sketch (see p 117I).

[Bahasa Malaysia summary

C Pada 5 Oktober 1997, plaintif sedang menunggang motosikalnya apabila beliau telah dilanggar oleh sebuah motosikal lain yang ditunggang oleh si mati, yang sedang datang dari arah yang bertentangan. Penumpang motosikal si mati telah memberi keterangan bahawa beliau dan si mati telah keluar daripada sebuah jalan tepi di sebelah kini jika seseorang memandang ke arah Mak D Mandin dan telah berniat untuk membelok ke kanan setelah bergerak pada satu jarak yang singkat ke atas Mak Mandin. Mereka kemudiannya berhenti hampir di tengah-tengah jalan tersebut, dengan niat untuk menyeberangi jalan tersebut. Oleh kerana mereka telah berhenti, penunggang motosikal itu melihat sebuah van yang E menuju ke atas mereka memperlahankan kenderaannya dengan memasangkan isyarat sebelah kanannya, dengan niat untuk melintasi laluan mereka. Tiba-tiba, motosikal plaintif, yang mengekori van tersebut, telah memotong van itu dan berlanggar dengan motosikal yang sedang berhenti tersebut. Versi plaintif adalah bahawa beliau tidak memotong van tersebut tetapi sedang mengekori van tersebut F apabila motosikal si mati berlanggar dengan motosikal beliau. Setelah mendengar keterangan tersebut, hakim mahkamah sesyen memutuskan si mati bertanggungan sepenuhnya dan memberikan plaintif ganti rugi. Defendan (yang merupakan tuan punya motosikal yang ditunggang oleh si mati), yang tidak berpuashati dengan keputusan tersebut telah merayu.

G

Diputuskan, membenarkan rayuan tersebut:

(1) Jika plaintif berada di sebelah bahagian jalan yang betul dan jika motosikal defendan yang sedang datang telah berlanggar dengan H motosikal beliau di sebelah jalan plaintif seperti mana yang didakwa oleh plaintif, kedua-dua motosikal akan didapati berada di sebelah jalan plaintif. Walau bagaimanapun tiada keterangan seperti mana yang ditunjukkan dalam pelan lakar menunjukkan motosikal defendan terbaring hampir-hampir berdekatan garisan tengah dan di bahagian jalannya sedangkan motosikal plaintif telah tergeluncur I dan terbuang jauh daripada motosikal defendan yang telah jatuh itu dan di dapati berbaring di pinggir rumput sebelah kiri apabila seseorang memandang ke arah Mak Mandin. Selanjutnya,

kepingan-kepingan kaca pecah dan titisan darah terdapat di sebelah bahagian jalan defendan semata-mata. Oleh yang demikian, versi plaintif mengenai kemalangan tersebut tidak boleh diterima (lihat ms 117D–F). A

(2) Tiada keterangan menunjukkan bahawa ianya merupakan plaintif yang telah memotong van tersebut dan berlanggar dengan motosikal defendan yang berhenti ketika itu (lihat ms 117F–G). B

(3) Motosikal defendan adalah sesungguhnya terhenti ketika ianya dilanggar kerana ianya telah jatuh tepat berdekatan garisan putih tengah jalan di mana penunggang motosikal tersebut menyatakan mereka telah berhenti (lihat ms 117G).

(4) Selanjutnya, pemandu van telah menyatakan dalam laporan beliau bahawa plaintif telah memotong beliau (lihat ms 117G–H). C

(5) Sehubungan itu, keputusan hakim perbicaraan bahawa versi plaintif haruslah dipercayai tidak disokong oleh apa-apa keterangan seperti mana yang terdapat dalam pelan lakar tersebut (lihat ms 117I).] D

Notes

For cases on road accident, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 391–420. E

P Ramanathan (*VP Nathan & Partners*) for the appellant/defendant.
Shyma Nair (*N Shyma & Wong*) for the respondent/plaintiff.

Kamalanathan Ratnam J: F

Facts

On 5 October 1997 at about 4.40pm, the plaintiff was riding his motorcycle PDS 568 along Jalan Bagan Lallang from the direction of Juru/Mak Mandin towards Sg Puyu when the plaintiff's motorcycle was collided into by motorcycle PCU 3903 ridden by the deceased rider and who was G proceeding from the opposite direction. Having heard the evidence the learned sessions judge found the deceased rider totally liable and awarded the plaintiff damages. Dissatisfied with the decision, the defendant who was the owner of the said motorcycle PCU 3903, appealed. After hearing submissions, I allowed the appeal and found the plaintiff totally liable. H Dissatisfied with my decision, the plaintiff now seeks leave of the Court of Appeal to appeal.

Findings of the court

The pillion rider of the defendant's motorcycle testified that he and his rider I had come out of a side road on the left as one faces Mak Mandin and had intended to turn right after proceeding for a short distance in the direction

A of Mak Mandin. They then stopped near the center of the road on their half of the road intending to cut across the road. As they were stationary, they noticed an oncoming van slowing down with its right signal on, intending to cut across their path. Suddenly, the plaintiff's motorcycle which was following the van, overtook the van and collided into the stationary defendant's motorcycle.

B

The plaintiff's version was that he was riding his motorcycle and following a van. He was then about one foot from the center white line. Initially he had wanted to overtake the van. However, on seeing the van's right indicator signal, he slowed down and was following the van when the defendant's motorcycle collided into his motorcycle, causing his motorcycle C to be flung across the road to the right.

In his particulars of negligence pleaded against the deceased rider, the plaintiff had alleged that the deceased rider had trespassed into his lawful path. He maintained that the collision occurred on his side of the road.

The investigating officer testified that there is a side road both on the D left and on the right as one faces Mak Mandin but which side roads were not shown in his sketch. The damages to both motorcycles were frontal whereas the van was not damaged at all.

Having considered the evidence led and the submissions of counsel, I was unable to accept the plaintiff's version as being the correct version of E the accident. If the plaintiff was all the time on his correct half of the road and if the defendant's oncoming motorcycle had collided into his motorcycle on the plaintiff's side of the road, surely both motorcycles would have been found on the plaintiff's side of the road. However, the silent evidence as reflected in the sketch plan shows the defendant's motorcycle lying very close to the center line and on its side of the road whereas the F plaintiff's motorcycle had skidded to a distance of 12.30m and gone beyond the defendant's fallen motorcycle and is found lying on the left grass verge as one faces Mak Mandin. Further, pieces of broken glass and a blood spot are all found completely on the defendant's half of the road. To my mind, all these silent evidence cry out with one voice, that it was the plaintiff who G had overtaken the van that was slowing down and had collided into the stationary defendant's motorcycle. I hold that the defendant's motorcycle was indeed stationary when it was collided into because it had fallen exactly near the center white line where the defendant's pillion said they had stationed themselves.

Besides, the van driver in his report has said that the plaintiff who was H following him overtook him and he heard the sound of a collision at his rear. This meant that as soon as the motorvan slowed down, the plaintiff immediately overtook the van and collided into the stationary motorcycle of the defendant's whilst the van had moved on forward. That is why the van driver reported that the collision was to his rear.

I The findings of the trial judge that the plaintiff's version ought to be believed is unsupported by the silent evidence as found in the key and sketch.

I, therefore, allowed the appeal and set aside the judgment of the sessions court which held the defendant totally liable. In consequence, I dismissed the plaintiff's claim with costs and ordered the deposit to be refunded to the appellant.

Appeal allowed.

Reported by Lim Lee Na